

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

Hon. Anita B. Brody

ALL OPT OUT PLAINTIFFS (*see Attachment A for a complete list of actions involving Opt Out Plaintiffs*)

ORDER

WHEREAS, the Court held an Organizational Meeting of all Opt Outs who have pending claims in MDL No. 2323 against the National Football League, NFL Properties LLC (collectively, the “NFL Parties”) and/or a NFL Member Club (such Opt Outs, the “Opt Out Plaintiffs”)¹ on Monday, March 27, 2017; and

WHEREAS, as a result of that Organizational Meeting, and following the Parties’ meet and confer and joint submission of this Proposed Order, the Court has determined that initial motion practice in MDL No. 2323, as defined below, should proceed in accordance with the schedule and the terms set forth below;

IT IS HEREBY ORDERED that:

Motion for Leave to File a Second Amended Master Administrative Long-Form Complaint and an Amended Short Form Complaint Template

1. Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, Lead Counsel for Opt Out Plaintiffs may file a motion for leave to file a Second Amended Master Administrative Long-Form Complaint and an Amended Short Form Complaint Template (not to

¹ For the purposes of this Order only, “Opt Out Plaintiffs” shall include only non-Settlement Class Member plaintiffs with pending claims in MDL 2323.

exceed twenty-five (25) pages, exclusive of the Second Amended Master Administrative Long-Form Complaint and the Amended Short Form Complaint Template) on or before April 26, 2017. Any such motion shall be accompanied by a supporting memorandum describing how the Second Amended Master Administrative Long-Form Complaint and the Amended Short Form Complaint Template comport with Rule 15(a)(2).

2. The NFL Parties may file an opposition to any such motion for leave (not to exceed twenty-five (25) pages) on or before May 26, 2017.

3. Lead Counsel for Opt Out Plaintiffs may file a reply brief in support of any such motion for leave (not to exceed ten (10) pages) on or before June 12, 2017.

4. If the Court grants the motion for leave, the Court expects to follow the agreed-upon schedule outlined in the remaining portion of this order. **Following the Court's ruling on the motion for leave, the Parties must submit a follow-up scheduling order that includes dates certain.**

5. If the Court grants the motion for leave, Lead Counsel for Opt Out Plaintiffs shall file the Second Amended Master Administrative Long-Form Complaint on the 12-md-02323 docket on or before fifteen (15) days after the Court's Order granting the motion for leave, and each Opt Out Plaintiff shall file a Short Form Complaint on both the 12-md-02323 docket and the applicable underlying docket for the given action on or before fifteen (15) days after the Court's Order granting the motion for leave.

6. As provided in Case Management Order No. 4 (ECF No. 98), upon the filing of any Second Amended Master Administrative Long-Form Complaint, together with the individual Opt Out Plaintiff's Short Form Complaint (together, the "Second Amended Complaint"), all allegations, claims, theories of recovery and/or prayers for relief contained in complaints by Opt

Out Plaintiffs in cases that have been coordinated and/or consolidated in this MDL, as well as complaints that are filed by individual Opt Out Plaintiffs in cases that are coordinated and/or consolidated in this MDL after the date of this Order, shall be deemed to be amended, restated and superseded by the allegations, claims, theories of recovery and/or prayers for relief contained in the Second Amended Complaint. The Second Amended Complaint shall remain the controlling pleading if that individual Opt Out Plaintiff's action is not terminated during the course of MDL pretrial proceedings, and, if applicable, is transferred or remanded back to the court from which it was transferred. This Paragraph 6 shall not apply to the actions filed by Opt Out Plaintiffs against the Chiefs and Cardinals that are listed in Paragraph 10 of this Order.

NFL Parties' Motions to Dismiss

7. If the Court grants the motion for leave to file a Second Amended Complaint, the NFL Parties may move to dismiss the Second Amended Complaint under Federal Rule of Civil Procedure 12(b) on or before sixty (60) days after the filing of the Second Amended Complaint. The NFL Parties shall file two motions, with supporting briefs for each: (i) a motion for dismissal on preemption grounds; and (ii) a motion for dismissal on any other 12(b) grounds. Each supporting brief shall not exceed thirty-five (35) pages.

8. Lead Counsel for Opt Out Plaintiffs may file opposition briefs to the NFL Parties' motions to dismiss the Second Amended Complaint on or before sixty (60) days after the NFL Parties file their motions. Each opposition brief shall not exceed thirty-five (35) pages. In addition, to the extent that the NFL Parties' motions address any claims unique to a given Opt Out Plaintiff's Short Form Complaint, Counsel for such Opt Out Plaintiff(s) may file a supplemental brief not to exceed ten (10) pages that opposes that argument on or before sixty (60) days after the NFL Parties file their motions.

9. The NFL Parties may file reply briefs in further support of their motions to dismiss on or before forty-five (45) days after Lead Counsel for Opt Out Plaintiffs files any opposition briefs. Each reply brief shall not exceed thirty (30) pages.

Pending Remand Motions

10. Pursuant to the Court's July 13 and 20, 2016 Orders (ECF Nos. 6873, 6878) ruling that briefing on remand in the *Smith v. Arizona Cardinals Football Club, LLC* action (16-cv-1704) and the *Lewis, Smith, and Kenney v. Kansas City Chiefs Football Club, Inc.* actions (14-cv-1995, 14-cv-3383, 14-cv-4779) will be coordinated with any further briefing the Court may order on the NFL Parties' motion to dismiss on preemption grounds, Plaintiffs may file, or refile, motions to remand fifteen (15) days after the Court's Order on the motion for leave to file the Second Amended Complaint. The supporting brief shall not exceed thirty-five (35) pages.

11. Counsel for the Kansas City Chiefs Football Club, Inc. (the "Chiefs") may file a consolidated opposition brief to the *Lewis, Smith, and Kenney* Plaintiffs' motions to remand on or before sixty (60) days after Plaintiffs' filing of motions to remand. The consolidated opposition brief shall not exceed thirty-five (35) pages.

12. Counsel for the Arizona Cardinals Football Club, LLC (the "Cardinals") may file an opposition brief to the *Smith* Plaintiffs' motion to remand on or before sixty (60) days after Plaintiffs' filing of motions to remand. The opposition brief shall not exceed thirty-five (35) pages.

13. Plaintiffs may file reply briefs in further support of their motions to remand on or before forty-five (45) days after the filing of the Chiefs' and Cardinals' opposition briefs. Each brief shall not exceed twenty-five (25) pages.

Adjudication of NFL Parties' Motion to Dismiss and the Pending Remand Actions

14. The Court shall hear argument on, and rule on, the NFL Parties' motion to dismiss on preemption grounds before hearing argument on, and ruling on, the NFL Parties' motion to dismiss on other 12(b) grounds.

15. The Court shall coordinate argument and ruling on any remand motions filed pursuant to Paragraph 10 of this Order with argument and ruling on the NFL Parties' motion to dismiss on preemption grounds pursuant to Paragraph 7 of this Order.

Motions to Dismiss by Chiefs and Cardinals

16. Should the Court deny Plaintiffs' motions to remand filed pursuant to Paragraph 10 of this Order, the Chiefs and Cardinals may file motions to dismiss the respective complaints pursuant to Federal Rule of Civil Procedure 12(b) (on preemption and/or other grounds) on or before sixty (60) days of the Court's Order denying remand. The Chiefs are encouraged to coordinate and/or consolidate briefing on the *Lewis*, *Smith*, and *Kenney* actions to avoid duplication among them. Each brief shall not exceed forty (40) pages.

17. Plaintiffs shall file opposition briefs within sixty (60) days of the Chiefs' and Cardinals' filing of any such motions pursuant to Paragraph 16 of this Order. Each brief shall not exceed forty (40) pages.

18. The Cardinals and Chiefs shall file any reply briefs within forty-five (45) days of Plaintiffs' filing of opposition briefs. Each brief shall not exceed twenty-five (25) pages.

Other Motion Practice and Discovery

19. All discovery proceedings remain stayed until further order of the Court.

IT IS ORDERED.

s/Anita B. Brody 4/12/2017

ANITA B. BRODY, J.
United States District Judge

Copies **VIA ECF** on _____ to:

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ATTACHMENT A**List of Pending Actions in MDL No. 2323 Involving Opt Out Plaintiffs**

1. *Abdullah, et al. v. NFL, et al.* (12-cv-6774)
2. *Adams, et al. v. NFL, et al.* (13-cv-7661)
3. *Allen, et al. v. NFL, et al.* (13-cv-5439)
4. *Anderson, et al. v. NFL, et al.* (13-cv-2325)
5. *Anderson, et al. v. NFL, et al.* (13-cv-5206)
6. *Andrews, et al. v. NFL, et al.* (12-cv-4632)
7. *Baggs, et al. v. NFL, et al.* (13-cv-5309)
8. *Bailey, et al. v. NFL, et al.* (12-cv-5372)
9. *Ballard, et al. v. NFL, et al.* (13-cv-2244)
10. *Bauman, et al. v. NFL, et al.* (12-cv-4576)
11. *Boyd, et al. v. NFL, et al.* (12-cv-0092)
12. *Brister, et al. v. NFL* (12-cv-3693)
13. *Brodie, et al. v. NFL, et al.* (12-cv-0861)
14. *Bush, et al. v. NFL, et al.* (13-cv-5449)
15. *Cherry, et al. v. NFL* (12-cv-4121)
16. *Culpepper, et al. v. NFL, et al.* (12-cv-2490)
17. *Demarie, et al. v. NFL, et al.* (13-cv-7659)
18. *Douglass v. NFL, et al.* (13-cv-7376)
19. *Duckworth, et al. v. NFL, et al.* (13-cv-4231)
20. *Everitt, et al. v. NFL, et al.* (12-cv-0731)
21. *Finn, et al. v. NFL* (12-cv-1034)
22. *Foreman, et al. v. NFL, et al.* (12-cv-4160)
23. *Garner, et al. v. NFL, et al.* (12-cv-4634)
24. *Gayle v. NFL, et al.* (12-cv-5212)
25. *Hairston, et al. v. NFL, et al.* (12-cv-0989)
26. *Hannah, et al. v. NFL, et al.* (12-cv-3379)
27. *Henderson, et al. v. NFL, et al.* (12-cv-3534)
28. *Holt, et al. v. NFL, et al.* (12-cv-4185)
29. *Hopkins, et al. v. NFL, et al.* (12-cv-1239)
30. *Hughes, et al. v. NFL, et al.* (12-cv-1423)
31. *Jani, et al. v. NFL, et al.* (14-cv-2064)
32. *Jones, et al. v. NFL* (12-cv-1027)
33. *Jordan, et al. v. NFL* (12-cv-2802)
34. *Kenney, et al. v. Kansas City Chiefs Football Club, Inc.* (14-cv-4779)
35. *Lewis, et al. v. Kansas City Chiefs Football Club, Inc.* (14-cv-1995)
36. *Little, et al. v. NFL, et al.* (12-cv-2219)
37. *Maxwell, et al. v. NFL, et al.* (12-cv-1023)
38. *Monk, et al. v. NFL, et al.* (12-cv-3533)
39. *Morris, et al. v. NFL, et al.* (12-cv-5210)
40. *Morton v. NFL, et al.* (13-cv-7660)
41. *Parrish v. NFL, et al.* (12-cv-1700)
42. *Pear, et al. v. NFL, et al.* (12-cv-1025)
43. *Pugh, et al. v. NFL, et al.* (12-cv-1165)

44. *Scroggins v. NFL* (16-cv-2058)
45. *Seau, et al. v. NFL, et al.* (13-cv-1531)
46. *Seau, et al. v. NFL, et al.* (13-cv-1532)
47. *Simmons, et al. v. NFL, et al.* (13-cv-6354)
48. *Smith, et al. v. Arizona Cardinals Football Club, LLC* (16-cv-1704)
49. *Smith, et al. v. Kansas City Chiefs Football Club, Inc.* (14-cv-3383)
50. *Stabler, et al. v. NFL, et al.* (12-cv-4186)
51. *Steed v. NFL, et al.* (12-cv-1026)
52. *Sweet, et al. v. NFL, et al.* (12-cv-7214)
53. *Wisniewski, et al. v. NFL, et al.* (12-cv-4187)